



*HCP.No.1516/2023*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.12.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1516/2023

Kavibharathi

..

Petitioner

Versus

1.The Secretary to the Government  
Home, Prohibition and Excise Department  
Secretariat, Chennai 600 009.

2.The Commissioner of Police  
Salem City,

3.The Superintendent of Prison  
Central Prison, Salem-7.

4.The Inspector of Police  
Kondalampatty Police Station  
Salem City.

..

Respondents

Prayer:- Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus for the records in connection



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with the order of detention passed by the 2<sup>nd</sup> respondent dated 10.07.2023 in CMP.No.64/Drug Offender/Salem City/2023 against the petitioner husband Palaniyandi @ Beema @ Bharathi, male, aged 26 years, son of Rameswaran, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji  
For Respondents : Mr.E.Raj Thilak  
Additional Public Prosecutor  
assisted by Mr.Aravind.C

**ORDER**

**[Order of the Court was made by S.S.SUNDAR, J.]**

- (1)The petitioner, wife of the detenu herein, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 10.07.2023 slapped on her husband, branding her as "Drug Offender" under the Tamil Nadu Act 14 of 1982.
- (2)Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.
- (3)Though several grounds are raised in the petition, the learned counsel for the petitioner contended that the bail order in the similar case relied on by



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the Detaining Authority to arrive at the subjective satisfaction that the detenu is likely to be released on bail, was obtained during COVID-19 situation and that placing reliance on such order shows the non-application of mind on the part of the Detaining Authority.

(4) On a perusal of the Grounds of Detention, it is seen that the Detaining Authority had relied upon the order of bail in similar case in CMP.No.323/2020 passed by the learned Special Judge for EC Act Cases, Salem. However, in the Booklet, in particular, page No.102, it is seen that the bail order in the similar case was obtained during COVID-19 situation and bail was granted to the accused therein with a specific reference to COVID-19. Further, this Court finds that the said order relates to release of the accused persons therein on statutory bail u/s.167[2] of Cr.P.C., since the accused therein had been in prison for more than 90 days and not on merits. It is in the said circumstances, this Court finds that the subjective satisfaction arrived at by the Detaining Authority to hold that the detenu is likely to be released on bail, suffers from non-application of mind.



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(5)The Hon'ble Supreme Court, in the case of ***Rekha Vs. State of Tamil Nadu through Secretary to Government and Another*** reported in ***2011 [5] SCC 244***, has considered a case where it is stated that in the grounds of detention that relatives of detenu are taking action to take him on bail in the criminal case in which the detenu was in remand and that in similar case, bail was granted by Courts. Since no details had been given about the alleged similar cases in which bail was allegedly granted by the Court concerned, it is held by Hon'ble Supreme Court that in the absence of details, the statement which is mere *ipse dixit*, cannot be relied upon and that itself is sufficient to vitiate the detention order. When the subjective satisfaction was irrational or there was non-application of mind, the Hon'ble Supreme Court held that the order of detention is liable to be quashed. It is relevant to extract paragraphs No.10 and 11 of the said judgment of the Hon'ble Supreme Court:-

*"10. In our opinion, if details are given by the respondent authority about the alleged bail orders in similar cases mentioning the date of the orders, the bail application number, whether the bail order was passed in respect of the co-accused in the same case, and*



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*whether the case of the co-accused was on the same footing as the case of the petitioner, then, of course, it could be argued that there is likelihood of the accused being released on bail, because it is the normal practice of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is ordinarily granted bail. However, the respondent authority should have given details about the alleged bail order in similar cases, which has not been done in the present case. A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored.*

*11. In our opinion, the detention order in question only contains ipse dixit regarding the alleged imminent possibility of the accused coming out on bail and there was no reliable material to this effect. Hence, the detention order in question cannot be sustained."*

(6) In view of the ratio laid down by the Hon'ble Supreme Court in the aforesaid judgment and in view aforesaid facts, this Court is of the view that the detention order is liable to be quashed.



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(7)Accordingly, the detention order passed by the 2<sup>nd</sup> respondent dated 10.07.2023 in CMP.No.62/Drug Offender/Salem City/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu is directed to be set at liberty forthwith unless he is required in connection with any other case.

[SSSRJ] [SM J]  
01.12.2023

AP  
Internet: Yes



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- 2.The Commissioner of Police  
Salem City,
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Central Prison, Salem-7.
- 4.The Inspector of Police  
Kondalampatty Police Station  
Salem City.
- 5.The Public Prosecutor  
High Court, Madras.



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S.S.SUNDAR, J.,  
AND  
SUNDER MOHAN, J.,

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